

ITEM: 21

SUBJECT: Amendment to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Mercury in Cache Creek, Bear Creek, Sulphur Creek, and Harley Gulch – *Consideration of Adoption of Proposed Amendment and Filing of a Draft Environmental Document*

BOARD ACTION: This is the continuation of a public hearing for the Regional Board to consider a resolution adopting amendment to the Basin Plan to regulate mercury and methylmercury discharges in the Cache Creek watershed.

BACKGROUND: Regional Board staff has developed a total maximum daily load (TMDL) report for methylmercury in Cache Creek, Bear Creek and Harley Gulch. Staff is proposing an amendment to the Basin Plan to implement the TMDL for Cache Creek and its tributaries. The Basin Plan staff report provides background information and evaluates several alternatives to reduce mercury and methylmercury loading in the watershed.

The proposed Basin Plan amendment contains methylmercury fish tissue objectives that will protect humans and wildlife that consume fish from the Cache Creek watershed. The amendment also proposes to add the commercial and sport fishing beneficial use to clarify the existing uses of Cache and Bear Creeks.

The proposed Basin Plan amendment requires 1) inactive mine owners to reduce the loads of total mercury entering the creeks by controlling erosion and discharge from the mines, 2) land owners to control erosion of soils with elevated mercury concentrations, 3) activities in the stream channels to comply with existing erosion control requirements, and 4) new projects to limit sources of methylmercury in both the upper and lower watersheds.

At the public hearing on 23 June, the Regional Board requested Staff to revise proposed requirements for restoration projects in the lower Cache Creek watershed and reevaluate costs and environmental impacts. In response to the Regional Board's request and public comments, Staff revised the draft amendment and staff report. The revised report (August 2005 version) is available on the Regional Board's internet site at <http://www.waterboards.ca.gov/centralvalley/programs/tmdl/Cache-SulphurCreek/index.html>. Appendix I of the August 2005 staff report contains the resolution and the draft Basin Plan amendment.

Major changes in report include:

- Projects in the 10-year floodplain that could cause erosion need to demonstrate compliance with the existing Basin Plan objective for turbidity; compliance monitoring for projects that are part of a comprehensive resource management plan may be conducted up and

downstream of the management area; no mercury monitoring is required,

- Requirements for erosion control and road maintenance in the upper watershed are clarified, and
- No increase in methylmercury from new projects that discharge to Cache Creek is defined as no increase in concentration in the creek relative to upstream of the discharge.

Other significant changes in the August 2005 version of the draft Basin Plan Amendment staff report are:

- Cost estimates are expanded to include estimates for each type of implementation action showing initial expenditure and operations and management per year.
- Evaluation of potential environmental impacts and the CEQA checklist were updated.

In the course of making the above changes, staff conferred extensively with stakeholders in the lower watershed by email and telephone. In early July 2005, staff met with representatives of Yolo County and its consultants to discuss monitoring and potential impacts of the proposed Basin Plan Amendment on the County's future habitat development plans. Staff also met with the U.S. Fish and Wildlife Service and Yolo County representatives to examine whether information about habits and prey of local bald eagles could be incorporated into the proposed water quality objectives. There is not sufficient information to change the proposed water quality objectives but this will be reevaluated in the future.

The Basin Plan amendment meets the federal requirements for a TMDL for Cache Creek, Bear Creek and Harley Gulch.

This agenda item contains the resolution with the draft amendment, staff report with alternative analyses, and the environmental checklist. The environmental checklist concludes that the proposed amendment has no potential for adverse effects on wildlife or the environment.

Staff will make a presentation at the Regional Board meeting to discuss the proposed amendment and responses to public comments. The formal public comment period was still open at the time the Board agenda was prepared, therefore there may be additional public comments to consider and late revisions to the Basin Plan amendment and staff report. At this meeting, the Regional Board may close the public comment period and may consider either adoption of the resolution or continue the item at a later meeting. The resolution includes:

- Adoption of the amendment to the Basin Plan,
- Certification of the environmental documents and direction to the Executive Officer to file a Notice of Completion with the State Clearinghouse, and

- Direction for the Executive Officer to sign a Certificate of Fee Exemption and submit this Certificate in lieu of payment of the Department of Fish and Game filing fee to the Secretary for Resources.

The public comment period ended 5 October 2005. Written responses to the public comments will be provided to the Regional Board prior to the hearing.

ISSUES:

At the hearing, the Regional Board will be considering alternatives for:

- Water quality objectives to protect wildlife and humans consuming fish in the Cache Creek watershed, and
- An implementation plan to reduce mercury and methylmercury loads. The magnitude and costs of a load reduction program is dependent on the required time to achieve the water quality objectives.

Mgmt. Review _____

Legal Review _____

20/21 October 2005 Region 5 Board Meeting
Central Valley Regional Water Quality Control Board
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